

## The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON; STATE OF CONNECTICUT; STATE OF MARYLAND; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF OREGON; COMMONWEALTH OF MASSACHUSETTS; COMMONWEALTH OF PENNSYLVANIA; DISTRICT OF COLUMBIA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MINNESOTA; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT and COMMONWEALTH OF VIRGINIA,

NO. 2:18-cv-01115-RSL

**PLAINTIFF STATES' OPPOSITION TO  
THE FEDERAL DEFENDANTS'  
MOTION TO STAY PROCEEDINGS**

**NOTING DATE: Dec. 21, 2018**

### **Plaintiffs,**

V.

UNITED STATES DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls; SARAH HEIDEMA, in her official capacity as Director of Policy, Office of Defense Trade Controls Policy; DEFENSE DISTRIBUTED; SECOND AMENDMENT FOUNDATION, INC.; AND CONN WILLIAMSON.

### Defendants.

## I. INTRODUCTION

The central premise of the Federal Defendants’ motion for a stay—that an anticipated rulemaking “will directly bear on the issues of this case”—is entirely unsupported. Dkt. # 131, p. 1. Although they are undoubtedly familiar with their own final rules submitted for pre-publication review, the Federal Defendants provide no substantive information about them whatsoever. Instead, they cryptically assert that the anticipated rulemaking “pertains to” the federal government’s “consideration” of “whether” to remove firearms-related technical data from the U.S. Munitions List. *Id.* at 5. They assert that the final rules are “likely” to “affect” or “bear on” this case, *id.* at 5, 7, but they do not explain what the rules actually say, whether and how they differ from the corresponding proposed rules published in May 2018, or specifically what effect (if any) they will have on the 3D-printable firearm files that are the subject of this lawsuit.

Under *Landis v. North American Co.*, 299 U.S. 248, 255 (1936), the party moving for a stay “must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to someone else.” The Federal Defendants ignore that standard and the harm to the Plaintiff States and the public that would result from an indefinite delay, and identify no “hardship or inequity” that would befall them if this case proceeds on the schedule to which they stipulated just two months ago, because none exists. Having failed to show any hardship or inequity that would result from this case moving forward, the Federal Defendants are not entitled to a stay solely on the basis of an agency action to occur at an unknown future time that may or may not affect the files at issue here. Indeed, since the request for a stay “pending publication of final agency rulemaking” effectively seeks a stay of indefinite duration, the Federal Defendants must make an even higher showing of a “pressing need.” *Landis*, 299 U.S. at 255. They fall far short of meeting their burden.

## II. RELEVANT FACTUAL BACKGROUND

#### **A. The Temporary Modification, Letter, and Notice of Proposed Rulemaking**

This lawsuit challenges the Federal Defendants’ July 27, 2018 “Temporary Modification of Category I of the United States Munitions List” and Letter advising that Defense Distributed’s computer files for the automatic production of 3D-printed firearms were approved for “unlimited distribution.” Dkt. ## 29-1, 44-1, Ex. 7. The States allege that these two actions are invalid under the Administrative Procedure Act (APA) because they are *ultra vires*, contrary to law, and arbitrary and capricious. Dkt. # 29 (FAC), ¶¶ 218–240. No claims are asserted against the Private Defendants, who are necessary parties under Rule 19(a)(1)(B). Dkt. # 130 (Order), p. 5.

The Temporary Modification and Letter were enacted pursuant to a settlement agreement between the Federal and Private Defendants in the matter of *Defense Distributed v. U.S. Dep’t of State*, Case No. 15-cv-372-RP (W.D. Tex.). See Dkt. # 95 (Preliminary Injunction), pp. 5–6. These actions represented a reversal of the Federal Defendants’ previous regulatory position that posting the files online was an unlawful export of defense articles. See *id.* at 5–6, 17–18. The settlement agreement was signed in the midst of the public comment period for a related proposed rulemaking notice published on May 24, 2018, but was not made public until the public comment period for the rulemaking had closed. See *id.* at 6–7.

## **B. Relevant Procedural History**

On July 31, 2018, the Court issued a temporary restraining order (TRO) enjoining the Federal Defendants from implementing or enforcing the Temporary Modification and Letter, Dkt. # 23, and on August 27, converted the TRO to a preliminary injunction. Dkt. # 95. The Court found that the States would “likely suffer irreparable injury if the technical data for designing and producing undetectable weapons using a commercially-available 3D printer are published on the internet.” *Id.* at 20.

1       On October 5, the parties submitted a Joint Status Report proposing an agreed schedule  
 2 for the filing of the administrative record and motions practice. Dkt. # 110, pp. 8–10. On October  
 3 12, the Court issued a Case Management Order adopting the proposed deadlines for filing and  
 4 briefing the adequacy of the administrative record, and setting February 15, 2019 as the deadline  
 5 to file motions for summary judgment. Dkt. # 115.

6       In accordance with the agreed schedule, the Federal Defendants filed an administrative  
 7 record and certification on October 19, 2018. Dkt. # 116. However, the filed record contains no  
 8 documents that could conceivably support the 2018 regulatory reversal, and cherry-picks only  
 9 portions of the record that was before the agency when it decided to deregulate 3D-printed gun  
 10 files—prompting the States to move to supplement the record on November 15. *See generally*  
 11 Dkt. # 132 (Mot. to Supp. AR). The motion is noted for consideration on December 21 and as  
 12 of this filing has not been fully briefed. Also pending as of this filing is the States’ motion to  
 13 compel the Private Defendants to respond to their targeted discovery requests, which was filed  
 14 on December 4 and is noted for consideration on December 21. Dkt. # 148.

15 **C. The Federal Defendants’ Motion to Stay**

16       On November 15, 2018, the Federal Defendants filed the instant motion to stay “to allow  
 17 the Department of State to finalize a rulemaking that will directly bear on the issues of this  
 18 case.”<sup>1</sup> Dkt. # 131. The Federal Defendants have not submitted a copy of the final rules’ text, or  
 19 even provided a high-level summary of what the rules say. Their brief includes links to two  
 20 government webpages “noting [the] status” of two rules that the State and Commerce  
 21 Departments have submitted to the federal Office of Information and Regulatory Affairs (OIRA),  
 22 but these webpages contain no information about the substance of the rules or any link to their

---

23       <sup>1</sup> The day before the Federal Defendants filed the motion, their counsel contacted the States’ counsel and  
 24 requested that the States stipulate to a stay. Having received only one day’s notice and no information about the  
 substance of the anticipated final rules, the States declined to stipulate.

1 text. *See id.* at 4 & embedded URLs. Although the State Department surely knows what its own  
2 submitted rule says, the Federal Defendants provide no information indicating whether the rule  
3 is the same as, or different from, the May 24, 2018 proposed rules. *See id.* at 6 (stating  
4 alternatively that the rule might be “finalized as proposed” or, if not, that it “may nevertheless  
5 alter or clarify the issues before the Court” in some other, unspecified way). They state that the  
6 rule “pertains to” the State Department’s “consideration” of “whether” certain firearms and  
7 related technical data will remain on the U.S. Munitions List or not, and assert that the anticipated  
8 final rule is “likely to affect” the present proceedings. *Id.* at 5. But they shed no any light on  
9 how—if at all—the rule will change the way in which the federal government regulates the  
10 firearms and related “technical data” that are currently included in Category I of the Munitions  
11 List. They make no mention of the rule’s anticipated effect on the specific files at issue in this  
12 case—i.e, files that can be used to automatically manufacture undetectable, untraceable firearms  
13 using a commercially available 3D printer.

### III. ARGUMENT

#### A. Legal Standard

Under *Landis v. North American Co.*, 299 U.S. 248, 254 (1936), a district court has the discretionary power to stay its own proceedings. That power is “inherent in every court to control . . . its docket with economy of time and effort,” *id.*, but the court’s discretion is not “unfettered.” *Dependable Hwy. Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007); see also *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005) (“[T]his standard [of review for decision on motion to stay] is somewhat less deferential than the abuse of discretion standard used in other contexts.”). “Case management” reasons alone are “not necessarily a sufficient ground to stay proceedings.” *Dependable Hwy.*, 498 F.3d at 1066 (citing *Lockyer*, 398 F.3d at 1112).

To qualify for a *Landis* stay, the movant “has the burden to ‘make out a clear case of hardship or inequity in being required to go forward,’ and the court must weigh the competing interests that will be affected by the granting of or refusal to grant the stay.” *DeMartini v. Johns*, 693 F. App’x 534, 538 (9th Cir. 2017) (quoting *Landis*, 299 U.S. at 255); *see also Clinton v. Jones*, 520 U.S. 681, 708 (1997) (“The proponent of a stay bears the burden of establishing its need.”). In the Ninth Circuit, courts conduct this balancing by evaluating three factors: (1) “the possible damage which may result from the granting of a stay,” (2) “the hardship or inequity” to the movant from denying the stay; and (3) “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Ali v. Trump*, 241 F. Supp. 3d 1147, 1152 (W.D. Wash. 2017) (quoting *Lockyer*, 398 F.3d at 1110). Merely “being required to defend a suit” is not a “clear case of hardship or inequity” that would justify a stay. *Dependable Hwy.*, 498 F.3d at 1066. Finally, a stay of “indefinite duration” must be supported by a “pressing need.” *Belize Social Devel., Ltd. v. Gov’t of Belize*, 668 F.3d 724, 732 (D.C. Cir. 2012) (quoting *Landis*, 299 U.S. at 255); *accord Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997).

## **B. A *Landis* Stay Is Inappropriate**

For three reasons, the Federal Defendants have failed to make the requisite showing that they are entitled to a *Landis* stay. First, because the Federal Defendants avoid saying anything about the substance of forthcoming final rule, they have failed to show how a stay would advance the orderly course of justice. Second, the Federal Defendants would not suffer any “hardship or inequity” if the case proceeds based on the current stipulated case schedule. Dkt. #110. Third, a stay would harm the States because the suspension of their pending motions to supplement the administrative record and to compel discovery from the Private Defendants would delay—if not

1 deny altogether—the States’ access to relevant information critical to the merits of their claims,  
 2 and information of great public significance would remain hidden from public view.

3       **1. A stay would undermine the orderly course of justice**

4       The Federal Defendants assert that the anticipated final rules are “likely to affect the  
 5 relief requested” in this case, Dkt. # 131, p. 5, but do not reveal what the rules will actually say.  
 6 They state that they “currently anticipate” publishing final rules “as early as” February 2019,  
 7 with the caveat that “many internal and external factors may affect the timeline.” *Id.* at 4.  
 8 Because both the substance and the timing of the anticipated rules are entirely speculative, they  
 9 are too tenuous a ground to support a *Landis* stay.

10      First, although the Federal Defendants have surely reviewed the final rules they  
 11 submitted to OIRA for regulatory review, they offer no information about the rules’ substance.  
 12 Their silence makes it impossible to determine whether the final rules would ultimately  
 13 “simplify[] or complicat[e] . . . issues, proof, and questions of law.” *Lockyer*, 398 F.3d at 1110  
 14 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)); *see, e.g., SEIU, Local 102 v.*  
 15 *Cty. of San Diego*, 784 F. Supp. 1503, 1512–13 (S.D. Cal. 1992), *rev’d on other grounds*, 60  
 16 F.3d 1346 (9th Cir. 1994) (denying *Landis* stay where defendant “has made no factual showing  
 17 to support its legal assertion that the proposed regulation would change the outcome of this case,”  
 18 an issue on which it “bears the burden of proof”). The Federal Defendants have provided no  
 19 reason to suppose that awaiting publication of the final rules will promote orderly adjudication  
 20 of this case because they don’t reveal anything about what those rules will do.

21      Instead, the Federal Defendants assert that the final rules—whatever they end up  
 22 saying—“may render this proceeding moot” or “may . . . alter or clarify the issues before the  
 23 Court.” Dkt. # 131, pp. 5, 6. This overstates their case and does not support a stay. If the final  
 24

1 rules double down on the Federal Defendants' decision to deregulate 3D-printed firearms, the  
 2 States anticipate moving to amend their complaint to include allegations regarding the final  
 3 rulemaking, in which case the controversy would remain very much live. *See Fed. R. Civ. P.*  
 4 15(a)(2); *see, e.g., NRDC v. Locke*, No. C 01-0421 JL, 2009 WL 10681121, at \*8 (N.D. Cal.  
 5 Apr. 3, 2009) (granting leave to amend complaint to challenge final rule representing "latest  
 6 regulatory application of the same framework . . . challenged throughout this case"); *Cutler v.*  
 7 *Hayes*, 549 F. Supp. 1341, 1346 n.6 (D.D.C. 1982), *aff'd in part, vacated in part on other*  
 8 *grounds*, 818 F.2d 879 (D.C. Cir. 1987) (noting that court earlier "granted leave to amend the  
 9 complaint to include a substantive challenge" to final rule issued after original complaint). Nor  
 10 have the Federal Defendants offered any reason to believe the final rules will "alter or clarify"  
 11 the issues to such an extent that a stay would be warranted. Indeed, the complete administrative  
 12 record that the States are currently seeking, Dkt. # 132, will reveal whether the Federal  
 13 Defendants had any rational reason for deregulating 3D-printable gun files via the Temporary  
 14 Modification and Letter, and will shed light on whether any rationale offered in a final rule is  
 15 "no more than a *post hoc* rationalization advanced by an agency seeking to defend past agency  
 16 action against attack." *Cal. Pub. Util. Comm'n v. Fed. Energy Regulatory Comm'n*, 879 F.3d  
 17 966, 975 (9th Cir. 2018). Similarly, the discovery the States are currently seeking from the  
 18 Private Defendants will remain relevant regardless of what any final rule says, given that "the  
 19 injunction will remain in place until final judgment," Dkt. # 131, p. 7, and the discovery sought  
 20 goes to the matter of legal compliance under the injunction. *See* Dkt. # 148 (States' Mot. to  
 21 Compel). The States and, as discussed in Section III.B.3 below, the public have an significant  
 22 interest in obtaining the complete administrative record and responses to their discovery  
 23 requests, which they can only do if the case proceeds as scheduled.

On the other hand, if the final rule does not remove firearm-related technical data from the U.S. Munitions List, a permanent injunction against the Temporary Modification and Letter would still be necessary to prevent the “unlimited distribution” of 3D-printable firearm files they specifically authorized. Notably, the Federal Defendants rescinded the Temporary Modification and Letter only to comply with the TRO and preliminary injunction, but they have continued to actively defend this case. *Contra FBME Bank Ltd. v. Lew*, 142 F. Supp. 3d 70, 73–74, (D.D.C. 2015) (entering stay to enable defendant agency that “acknowledged substantial and legitimate concerns” with its rule to “reconsider” the action and undertake new notice-and-comment procedures). Although the President himself has questioned the “sense” of deregulating 3D-printable firearm files, Dkt. # 15-2, the Federal Defendants themselves have yet to acknowledge or act on his, the States’, or the Court’s concerns, nor given any indication they intend to correct their decision in the final rules. See Dkt. # 95 (Preliminary Injunction), p. 17 (“[T]here is no indication that the Department considered the unique properties of 3D plastic guns or evaluated the factors Congress deemed relevant when the Department decided to authorize the posting of the CAD files on the internet as of July 27, 2018.”). Absent any such indication, there is no reason to suppose that awaiting the final rules will simplify—let alone moot—this case.

Even taking at face value the Federal Defendants’ assertion that the final rules “may bear upon the case,” this is not a sufficient reason to stay it. Dkt. # 131, p. 5 (quoting *Leyva v. Certified Grocers of California Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979)). The Federal Defendants repeatedly invoke that ambiguous phrase, which they draw from a nearly 40-year old case. But *Leyva* does not remotely stand for the proposition that a court should stay its proceedings so long as a pending administrative rulemaking process purportedly “bears” on it. In *Leyva*, the Ninth Circuit held that where the Federal Arbitration Act mandates arbitration of fewer than all claims in a lawsuit, the court “may” stay any remaining related claims if it is “efficient for its own

1 docket and the fairest course for the parties.” 593 F.2d at 863. The panel remanded to the district  
 2 court to determine whether a *Landis* stay was proper. It noted that the arbitrator’s findings “may  
 3 be of valuable assistance to the court” in trying the remaining issues, but also that a “stay should  
 4 not be granted unless it appears likely the other proceedings will be concluded within a  
 5 reasonable time in relation to the urgency of the claims presented to the court.” *Id.* at 864.

6 Neither consideration in *Levy*a is present here. As explained above, the Federal  
 7 Defendants have given no reason to infer that the final rules will “be of valuable assistance” to  
 8 resolving this lawsuit because they have not disclosed what those rules will do. And even if they  
 9 had, they concededly cannot predict their timing to any degree of certainty. They admit that at  
 10 the earliest, the final rules would not be published until February 2019 (and not effective until  
 11 “likely” 45 days after that, in March or April). *See* Dkt. # 131, p. 4. They also acknowledge that  
 12 “many internal and external factors may affect the timeline.” *Id.* Thus, the “brief” four-month  
 13 stay the Federal Defendants request reflects the best-case scenario for administrative action—a  
 14 shaky assumption on which to base a stay of judicial proceedings. *See, e.g., SEIU, Local 102,*  
 15 784 F. Supp. at 1512–13 (denying stay sought pending adoption of proposed regulation by U.S.  
 16 Department of Labor, where “DOL currently represents that it anticipates such action by June  
 17 1992, but there is no guarantee of this” so “a stay awaiting the regulation could continue for an  
 18 indefinite amount of time”).

19 Even if OIRA completes its review within the estimated timeframe, the involvement of  
 20 the House Committee on Foreign Affairs—which will be under new leadership as of January 3,  
 21 2019—and the Senate Committee on Foreign Relations add additional elements of uncertainty.  
 22 Given all the timing uncertainties, the initial four-month stay could easily “continue for an  
 23 indefinite amount of time.” *Id.* at 1512. Indeed, the motion’s title betrays the true relief it seeks:  
 24 “to stay proceedings pending publication of final agency rulemaking.” Dkt. # 131 (capitalization

1 omitted). For that reason, the requested stay is even less appropriate. A stay of “indefinite  
 2 duration” must be supported by a “pressing need.” *Belize Social Devel., Ltd. v. Gov’t of Belize*,  
 3 668 F.3d 724, 732 (D.C. Cir. 2012) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936));  
 4 *Allison v. Amazon.com, Inc.*, No. C13-1612RSL, 2014 WL 12530954, at \*1 (W.D. Wash. Jan.  
 5 3, 2014). Because the Federal Defendants are effectively seeking an indefinite stay “until the  
 6 rulemaking is concluded,” Dkt. # 131, p. 6, whenever that may be, they must meet the heightened  
 7 burden to establish a “pressing need” for the relief. As discussed below, the Federal Defendants  
 8 have not met even the baseline “hardship or inequity” standard to warrant a stay. *A fortiori*, they  
 9 fail to show any “pressing need” justifying a stay of effectively an indefinite duration.

10       **2.      No hardship or inequity would befall the Federal Defendants from the denial  
                  of a stay**

11       The Federal Defendants do not identify any harm they would suffer if the litigation  
 12 proceeds on the current schedule, let alone a “clear case of hardship or inequity in being required  
 13 to go forward.” *Landis*, 299 U.S. at 255. That omission alone precludes a stay. *See, e.g.*,  
 14 *DeMartini*, 693 F. App’x at 538 (affirming denial of stay where “Defendants have not  
 15 persuasively argued that they were subjected to any ‘hardship or inequity’” from further  
 16 litigation); *Dependable Hwy.*, 498 F.3d at 1066 (reversing stay order because movants “failed to  
 17 establish a sufficient case of hardship”); *Lockyer*, 398 F.3d at 1112 (reversing stay order because  
 18 movant “has not made out a ‘clear case of hardship or inequity’”) (quoting *Landis*, 299 U.S. at  
 19 255).

20       The only even conceivable hardship the Federal Defendants mention is the “costs” of  
 21 litigating discovery and summary judgment motions. Dkt. # 131, p. 7. But that is insufficient for  
 22 a *Landis* stay as a matter of law. *See, e.g.*, *Lockyer v. Mirant Corp.*, 398 F.3d at 1112 (“[B]eing  
 23 required to defend a suit, without more, does not constitute a ‘clear case of hardship or inequity’

1 within the meaning of *Landis*."); *Yong v. INS*, 208 F.3d 1116, 1121 (9th Cir. 2000) ("Although  
 2 the stay may reduce the number of cases that the INS is required to litigate, the INS's workload  
 3 is only fractionally decreased because the stay only affects cases before a single district court  
 4 judge in a single judicial district."); *Mix v. Ocwen Loan Servicing, LLC*, No. C17-0699JLR, 2017  
 5 WL 5549795, at \*8 (W.D. Wash. Nov. 17, 2017) (Defendant's "burden of  
 6 producing discovery and preparing for trial does not demonstrate a clear case  
 7 of hardship or inequity") (citation omitted); *Lathrop v. Uber*, No. 14-cv-05678-JST, 2016 WL  
 8 97511, at \* 5 (N.D. Cal. Jan. 8, 2016) (Defendant "may face additional discovery obligations but  
 9 has not established that this hardship justifies staying the case, which would otherwise be delayed  
 10 with no identifiable end to the stay").

11 Even if they tried, the Federal Defendants could not meet their burden to prove a clear  
 12 hardship or inequity would result from abiding by the current schedule. All parties agreed to that  
 13 schedule to facilitate "the prompt and efficient resolution of this case" in the Joint Status Report  
 14 filed on October 5, 2018. Dkt. ##110, 113. The Federal Defendants cannot now complain that  
 15 proceeding with the case as planned would somehow be burdensome or unfair. Cf. Dkt. # 49  
 16 (Fed. Defs' Opp. to Mot. to Compel AR), p. 5 ("Plaintiffs do not explain why the Court should  
 17 deviate from the Scheduling Order it has already entered, which was based on an agreement  
 18 among the parties . . .").

19 **3. A stay would harm the Plaintiff States and the public**

20 In accordance with the agreed-upon schedule, the States have moved to supplement the  
 21 administrative record because nothing in the cherry-picked record the Federal Defendants have  
 22 filed thus far casts any light on their inexplicable decisions earlier this year to abruptly reverse  
 23 position and deregulate 3D-printable firearm data. *See* Dkt. # 132. The States have also moved  
 24 to compel the Private Defendants to respond to targeted discovery requests concerning their

1 continuing dissemination of 3D-printable firearm files after entry of the Court’s preliminary  
 2 injunction. *See* Dkt. # 148. The information sought in both motions not only goes right to the  
 3 merits of the States’ claims—it is also critical to the public’s interest in ascertaining the basis (if  
 4 any) for the governmental decisions to permit “unlimited distribution” of 3D-printable firearm  
 5 files abroad, as well as the degree to which those decisions (and Defendants’ subsequent actions)  
 6 continue to endanger the States’ 160 million residents and the rest of the nation. *See* Dkt. # 95  
 7 (Order), p. 23 (finding continued online publication of files at issue likely to cause irreparable  
 8 harm and noting “the evident alarm with which the proposed publication has been met in the  
 9 Congress, in the White House, amongst advocacy groups, and in state houses all over the  
 10 country”).

11 Rather than comply with their obligation to produce “the whole record,” 5 U.S.C. § 706,  
 12 the Federal Defendants seek a stay that would shield their decision-making from scrutiny. At the  
 13 very least, a stay would indefinitely delay the States’ access to that vital information, if not  
 14 prevent it entirely. Since this litigation began, the Federal Defendants have “failed to articulate  
 15 a reasonable explanation,” Dkt. # 95, p. 18, for their decision to permit the unlimited export of  
 16 3D-printable firearm data—whether to the Court, to counsel, to Congress, or to the public. *See*  
 17 *id.* at 23. Likewise, the Private Defendants have repeatedly sought to avoid producing  
 18 information about their post-injunction involvement in exporting 3D-printable firearm files. *See*  
 19 Dkt. # 148.

20 Even if the final rulemaking does become effective in four months (an improbably  
 21 optimistic scenario for the reasons explained above, *supra* at p. 8, the Defendants’ recalcitrance  
 22 in this litigation is unlikely to end along with it. Thus far, the Federal Defendants have failed to  
 23 provide anything but a cherry-picked administrative record, and the Private Defendants have  
 24 resisted virtually all efforts to obtain information about the actions they have taken, or failed to

1 take, to honor the injunction. Because a stay would effectively block the Plaintiff States'  
 2 legitimate requests for that information, it would materially injure both them and the public. *See,*  
 3 *e.g., Jones v. AD Astra Recovery Servs., Inc.*, 16-1013-JTM-GEB, 2016 WL 3145072, at \*6 (D.  
 4 Kan. June 6, 2016) (denying *Landis* stay because it would “still be necessary for the parties to  
 5 obtain discovery on the facts of this case”); *Kafatos v. Uber Technologies, Inc.*, No. 15-cv-  
 6 03727-JST, 2016 WL 97489, at \*2 (N.D. Cal. Jan. 8, 2016) (citing *Landis*, 299 U.S. at 255)  
 7 (denying *Landis* stay because “the parties still require discovery on a number of factual issues  
 8 regardless of the outcome of” pending proceedings); *Eisai Inc. v. Sanofi-Aventis U.S., LLC*, CV  
 9 08-4168 (MLC), 2011 WL 13143344, at \*1 (D.N.J. Nov. 14, 2011) (denying *Landis* stay where  
 10 there was at least a ““fair possibility’ that any further delay in proceeding with discovery in this  
 11 matter may prejudice Plaintiff”). Without the benefit of information to which they are entitled  
 12 that remains exclusively in the Defendants’ possession, the States and the public are still in the  
 13 dark, and a stay would only exacerbate the harm.

#### 14 IV. CONCLUSION

15 For the reasons above, the Plaintiff States respectfully request that the Court deny the  
 16 Federal Defendants’ *Motion to Stay Proceedings Pending Publication of Final Agency*  
 17 *Rulemaking*.

18  
 19 DATED this 6th day of December, 2018.

20 ROBERT W. FERGUSON  
 21 Attorney General

22 /s/ Jeffrey Rupert  
 23 JEFFREY RUPERT, WSBA #45037  
 Division Chief  
 24 TODD BOWERS, WSBA #25274  
 Deputy Attorney General  
 JEFF SPRUNG, WSBA #23607

1 KRISTIN BENESKI, WSBA #45478  
2 ZACHARY P. JONES, WSBA #44557  
3 Assistant Attorneys General  
[JeffreyR2@atg.wa.gov](mailto:JeffreyR2@atg.wa.gov)  
[ToddB@atg.wa.gov](mailto:ToddB@atg.wa.gov)  
[JeffS2@atg.wa.gov](mailto:JeffS2@atg.wa.gov)  
[KristinB1@atg.wa.gov](mailto:KristinB1@atg.wa.gov)  
[ZachJ@atg.wa.gov](mailto>ZachJ@atg.wa.gov)  
5 Attorneys for Plaintiff State of Washington

6 GEORGE JEPSEN  
7 Attorney General of Connecticut

8 */s/ Maura Murphy Osborne*  
9 MAURA MURPHY OSBORNE, CT-19987  
10 Assistant Attorney General  
Connecticut Office of Attorney General  
55 Elm St. P.O. Box 120  
Hartford, CT 06141-0120  
11 [Maura.murphyosborne@ct.gov](mailto:Maura.murphyosborne@ct.gov)  
Attorneys for Plaintiff State of Connecticut

12 BRIAN E. FROSH  
13 Attorney General of Maryland

14 */s/ Julia Doyle Bernhardt*  
15 JULIA DOYLE BERNHARDT  
16 Assistant Attorneys General  
Office of the Attorney General  
200 Saint Paul Place, 20th Floor  
Baltimore, MD 21202  
17 (410) 576-7291  
[jbernhardt@oag.state.md.us](mailto:jbernhardt@oag.state.md.us)  
18 Attorneys for Plaintiff State of Maryland  
GURBIR GREWAL  
19 Attorney General of New Jersey

20 */s/ Jeremy M. Feigenbaum*  
21 JEREMY M. FEIGENBAUM  
22 Assistant Attorney General  
Office of the Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street, 8th Floor, West Wing  
Trenton, NJ 08625-0080  
23 (609) 376-2690  
[Jeremy.Feigenbaum@njoag.gov](mailto:Jeremy.Feigenbaum@njoag.gov)  
24 Attorneys for Plaintiff State of New Jersey

1  
2 BARABARA D. UNDERWOOD  
3 Attorney General of New York

4 /s/ Steven Wu  
5 STEVEN WU  
6 Attorney General of New York  
7 28 Liberty Street  
8 New York, NY 10005  
9 [steven.wu@ag.ny.gov](mailto:steven.wu@ag.ny.gov)  
10 Attorneys for Plaintiff State of New York

11 MAURA HEALEY  
12 Attorney General of Commonwealth of  
13 Massachusetts

14 /s/ Jonathan B. Miller  
15 JONATHAN B. MILLER  
16 Assistant Attorney General  
17 Office of the Massachusetts Attorney General  
18 One Ashburton Place  
19 Boston, MA 02108  
20 (617) 963-2073  
21 [Jonathan.Miller@state.ma.us](mailto:Jonathan.Miller@state.ma.us)  
22 Attorneys for Plaintiff Commonwealth of  
23 Massachusetts

24 JOSH SHAPIRO  
15 Attorney General of Commonwealth of  
Pennsylvania

16 /s/ Jonathan Scott Goldman  
17 JONATHAN SCOTT GOLDMAN  
18 Executive Deputy Attorney General  
19 Civil Division  
20 Office of Attorney General  
21 Strawberry Square, 15th Floor  
22 Harrisburg, PA 17120  
23 717-783-1471  
24 [jgoldman@attorneygeneral.gov](mailto:jgoldman@attorneygeneral.gov)

21 /s/ Michael J. Fischer  
22 MICHAEL J FISCHER  
23 Pennsylvania Office of the Attorney General  
1600 Arch Street, Ste 300  
Philadelphia, PA 19103  
215-560-2171

PLAINTIFF STATES' OPPOSITION TO  
MOTION TO STAY PROCEEDINGS

[mfischer@attorneygeneral.gov](mailto:mfischer@attorneygeneral.gov)

*Attorney for Plaintiff Commonwealth of Pennsylvania*

KARL A. RACINE

## Attorney General for the District of Columbia

/s/ Robyn Bender

Deputy Attorney General  
Public Advocacy Division  
[Robyn.bender@dc.gov](mailto:Robyn.bender@dc.gov)

/s/ Jimmy Rock

Assistant Deputy Attorney General  
Public Advocacy Division  
202-741-0770  
[Jimmy.Rock@dc.gov](mailto:Jimmy.Rock@dc.gov)

[www.rocksolidgov.com](http://www.rocksolidgov.com)

/s/ Andrew J. Saindon

Senior Assistant Attorney General  
202-724-6643

andy.saindon@dc.gov

Office of the Attorney General for the  
District of Columbia  
441 4th Street NW, Ste 630 South  
Washington, DC 20001  
*Attorneys for Plaintiff District of Colu*

ELLEN E. ROSENBLUM

Attorney General of Oregon

/s/ Scott J. Kaplan

SCOTT J. KAPLAN, WSBA #49377  
Senior Assistant Attorney General  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
(971) 673-1880  
[scott.kaplan@doj.state.or.us](mailto:scott.kaplan@doj.state.or.us)  
*Attorneys for Plaintiff State of Oregon*

XAVIER BECERRA

## Attorney General of California

/s/ Nelson R. Richards

**PLAINTIFF STATES' OPPOSITION TO  
MOTION TO STAY PROCEEDINGS**

Office of the Attorney General  
2550 Mariposa Mall, Rm 5090  
Fresno, CA 93721  
559-705-2324  
[Nelson.richards@doj.ca.gov](mailto:Nelson.richards@doj.ca.gov)  
*Attorneys for the State of California*

CYNTHIA H. COFFMAN  
Attorney General of Colorado

/s/ Matthew D. Grove  
MATTHEW D. GROVE  
Assistant Solicitor General  
Colorado Department of Law  
1300 Broadway, 6<sup>th</sup> Floor  
Denver, Colorado 80203  
Telephone: (720) 508-6157  
FAX: (720) 508-6041  
E-Mail: [matt.grove@coag.gov](mailto:matt.grove@coag.gov)  
*Attorneys for Plaintiff State of Colorado*

MATTHEW P. DENN  
Attorney General of Delaware

/s/ Ilona M. Kirshon  
ILONA M. KIRSHON (#3705)  
Deputy State Solicitor  
State of Delaware Department of Justice  
Carvel State Office Building, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8400  
[Ilona.kirshon@state.de.us](mailto:Ilona.kirshon@state.de.us)

/s/ Patricia A. Davis  
PATRICIA A. DAVIS (#3857)  
Deputy Attorney General  
State of Delaware Department of Justice  
Dover, DE 19904  
(302) 257-3233  
patriciaA.davis@state.de.us  
Attorneys for the Plaintiff State of Delaware

RUSSELL A. SUZUKI  
Attorney General of Hawaii

*/s/ Robert T. Nakatsuji*  
ROBERT T. NAKATSUJI  
Deputy Attorney General

Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813  
(808) 586-1360  
[Robert.T.Nakatsuji@hawaii.gov](mailto:Robert.T.Nakatsuji@hawaii.gov)  
*Attorneys for Plaintiff State of Hawaii*

LISA MADIGAN  
Attorney General of Illinois

/s/ Brett E. Legner  
BRETT E. LEGNER  
Deputy Solicitor General  
Office of the Attorney General  
100 W. Randolph, 12th Floor  
Chicago, IL 60601  
(312) 814-2146  
[blegner@atg.state.il.us](mailto:blegner@atg.state.il.us)  
Attorneys for Plaintiff State of Illinois

THOMAS J. MILLER  
Attorney General of Iowa

/s/ Nathanael Blake  
NATHANAEL BLAKE  
Office of the Attorney General of Iowa  
Hoover State Office Bldg., 2nd Floor  
1305 East Walnut Street  
Des Moines, IA 50319  
(515) 281-4325  
[nathan.blake@ag.iowa.gov](mailto:nathan.blake@ag.iowa.gov)  
*Attorneys for the Plaintiff State of Iowa*

LORI SWANSON  
Attorney General of Minnesota

/s/ Jacob Campion  
JACOB CAMPION, MN Reg. #0391274  
Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1459  
[jacob.campion@ag.state.mn.us](mailto:jacob.campion@ag.state.mn.us)  
Attorneys for the Plaintiff State of Minnesota

JOSHUA H. STEIN

1 Attorney General of North Carolina  
2

/s/ Sripriya Narasimhan

3 SRIPRIYA NARASIMHAN

4 Deputy General Counsel

North Carolina Department of Justice

114 W. Edenton St.

Raleigh, NC 27603

(919) 716-6400

[snarasimhan@ncdoj.gov](mailto:snarasimhan@ncdoj.gov)

5 Attorneys for Plaintiff State of North Carolina  
6

7 PETER F. KILMARTIN

8 Attorney General of Rhode Island  
9

/s/ Susan Urso

10 SUSAN URSO

11 Assistant Attorney General

150 South Main Street

12 Providence, Rhode Island 02903

(401) 274-4400

[surso@riag.ri.gov](mailto:surso@riag.ri.gov)

13 Attorneys for Plaintiff State of Rhode Island  
14

15 THOMAS J. DONOVAN, JR.

16 Attorney General of Vermont  
17

/s/ Benjamin D. Battles

18 BENJAMIN D. BATTLES

Solicitor General

19 Office of the Attorney General

109 State Street

20 Montpelier, Vermont 05609-1001

(802) 828-5500

[benjamin.battles@vermont.gov](mailto:benjamin.battles@vermont.gov)

21 Attorneys for Plaintiff State of Vermont  
22

23 MARK R. HERRING

24 Attorney General of the  
Commonwealth of Virginia  
25

/s/ Samuel T. Towell

26 SAMUEL T. TOWELL

27 Deputy Attorney General, Civil Litigation

28 Office of the Attorney General of Virginia

Barbara Johns Building

29 202 N. Ninth Street  
30

PLAINTIFF STATES' OPPOSITION TO  
MOTION TO STAY PROCEEDINGS

19

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1                   Richmond, VA 23219  
2                   (804) 786-6731  
3                   [STowell@oag.state.va.us](mailto:STowell@oag.state.va.us)  
4                   *Attorney for Plaintiff Commonwealth of*  
5                   *Virginia*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

PLAINTIFF STATES' OPPOSITION TO  
MOTION TO STAY PROCEEDINGS

20

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744